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97TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES

REPORT
No. 97-817

COMPLETED

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PROVIDING FOR THE USE AND DISTRIBUTION OF THE FUNDS
AWARDED TO THE SHAWNEE TRIBE OF INDIANS IN DOCKETS 64,
335, AND 338 BY THE INDIAN CLAIMS COMMISSION AND DOCKET
64-A BY THE UNITED STATES COURT OF CLAIMS, AND FOR OTHER
PURPOSES

SEPTEMBER 16, 1982.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany H.R. 5795]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 5795) to provide for the use and distribution of the funds awarded to the Shawnee Tribe of Indians in dockets 64, 335, and 338 by the Indian Claims Commission and docket 64-A by the United States Court of Claims, and for other purposes having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 5795, introduced by Mr. McCurdy (for himself and Mr. Watkins) is to provide for the use and distribution of funds awarded to the Shawnee Tribe of Indians by the Indian Claims Commission and the United States Court of Claims.

BACKGROUND

On June 3, 1977, the Indian Claims Commission approved a compromise settlement in Dockets 64, 335 and 338 and awarded \$1,745,146.86 to the Shawnee Tribe as it existed in 1795, to compensate them for lands taken as a result of the Greenville Treaty of August 3, 1795, 7 Stat. 49.

The Indians Claims Commission found that the Shawnee Tribe of 1795 was the owner of a 1,667,496 acre tract in the present State of Ohio and within the area ceded by the Indians by the Greenville

Treaty. The value of this tract in 1795, as agreed upon by all parties concerned, was \$1,745,146.86. This was the amount of the final judgment. The funds to cover this award were appropriated on March 10, 1978.

Similarly, on March 20, 1979, the U.S. Court of Claims in Docket 64-A awarded \$437,735.92 to the Shawnee Tribe of Indians et al. This award represents additional compensation for lands ceded by the Shawnee Tribe by the treaties of September 29, 1817, 7 Stat. 160, and September 18, 1818, 7 Stat. 178. The subject lands had been previously confirmed to the Tribe by the Greenville Treaty and reconfirmed after the War of 1812 by the Treaty of September 8, 1815, 7 Stat. 131. The funds to cover this award were appropriated on August 22, 1979.

The beneficiaries of these awards are the Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma and the Cherokee Band of Shawnee descendants.

All three groups are comprised of the descendants of the original Shawnee Tribe as it was constituted in 1795 and 1818 when it signed the treaties for which the awards were given. The present tribal division in these three groups is the result of a long history of wars, unconsented removals and treaties.

The bill would divide the funds among the three Shawnee groups according to the formula used in the Shawnee judgment distribution as provided in the Act of August 3, 1964, 78 Stat. 555 as follows: 514/1378ths to the Absentee Shawnee Tribe of Oklahoma; 747/1378ths to the Cherokee Band of Shawnee descendants; and 117/1378ths to the Eastern Shawnee Tribe of Oklahoma. This division has been approved by all three groups.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that certain funds awarded to the Shawnee Tribe shall be used and distributed according to the provisions of this Act.

Section 2 divides the funds among the Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants as follows: 514/1378ths to the Absentee Shawnee Tribe of Oklahoma; 117/1378ths to the Eastern Shawnee Tribe of Oklahoma; and 747/1378ths to the Cherokee Band of Shawnee descendants.

Section 3 establishes the method for distributing the share of the Absentee Shawnee Tribe of Oklahoma. The section requires the preparation of a tribal roll by the Secretary of the Interior and a per capita distribution of 75 percent of the share to all persons listed on this roll, the remaining 25 percent to be used for tribal programs.

Section 4 provides for the distribution of the Eastern Shawnee Tribe of Oklahoma's share of the award. The section requires the Secretary of the Interior to prepare a tribal roll and to make a per capita distribution of 80 percent of the tribal share to persons listed on the roll, the remaining 20 percent to be used for a tribal land purchase program.

Section 5 requires the Secretary of the Interior to prepare a roll of the Cherokee Band of Shawnee descendants and to make a per capita distribution of the group's share to all persons listed on the roll.

Section 6 provides for the direct payment of per capita shares to adults and for the Secretary to establish procedures for the payment of per capita shares to legal incompetents and individuals under the age of 18 so as to protect the interests of such individuals.

Section 7 provides that none of the funds shall be subject to federal or state income taxes or be considered as income or resources in determining eligibility under the Social Security Act.

Section 8 authorizes the Secretary of the Interior to prescribe rules and regulations to carry out the provisions of this Act.

COST AND BUDGET ACT COMPLIANCE

The cost analysis prepared by the Congressional Budget Office, which the Committee adopts as its own, follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 17, 1982.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 5795, a bill to provide for the use and distribution of funds awarded to the Shawnee Tribe of Indians in dockets 64, 335, and 338 by the Indian Claims Commission and docket 64-A by the United States Court of Claims, and for other purposes, as ordered reported by the House Committee on Interior and Insular Affairs, June 16, 1982.

Based on this review, it is expected that no additional cost to the government would be incurred as a result of enactment of this legislation. The bill would divide approximately \$2.2 million previously awarded by the United States Court of Claims among three specific Shawnee groups according to agreed upon plans.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RAYMOND C. SCHEPPACH
(For Alice M. Rivlin, Director).

INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 5795 will have no inflationary impact.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the Committee and no recommendations were submitted to the Committee pursuant to rule X, clause 2(b)2.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, approved H.R. 5795 and recommends its enactment by the House of Representatives.

EXECUTIVE COMMUNICATIONS

A letter from the Department of the Interior to the Speaker transmitting draft legislation which is identical to H.R. 5795, as introduced in the House, follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., January 5, 1982.

HON. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Inasmuch as the time requirement mandated by the Indian Judgment Funds Act of 1973, 87 Stat. 466, for the Secretary of the Interior to submit a plan for the use and distribution of the funds awarded to the Shawnee Tribe of Indians in Dockets 64, 335 and 338 by the Indian Claims Commission and Docket 64-A by the U.S. Court of Claims to the Congress has expired, it is now necessary to seek legislation.

Enclosed is a draft bill entitled "To provide for the use and distribution of the funds awarded to the Shawnee Tribe of Indians in Dockets 64, 335 and 338 by the Indian Claims Commission and Docket 64-A by the U.S. Court of Claims, and for other purposes."

We recommend that the draft bill be introduced and referred to the appropriate Committee, and that it be enacted.

The purpose of the draft bill is as stated in the title. It would establish the division of the judgment funds among three groups; two federally recognized tribes (i.e., the Absentee Shawnee Tribe of Oklahoma and the Eastern Shawnee Tribe of Oklahoma) and the lineal descendants of the Cherokee Band of Shawnee. It also provides for the disposition of the apportioned shares of the respective groups.

On June 3, 1977, the Indian Claims Commission approved a compromise settlement in Dockets 64, 335 and 338 and awarded \$1,745,146.86 to the Shawnee Tribe as it existed in 1795, to compensate them for lands taken as a result of the Greenville Treaty of August 3, 1795, 7 Stat. 49. This treaty marked the end of over ten years of hostilities between the United States and the Indian tribes of the Ohio region. By its terms the Indians surrendered most of Ohio with the exception of a strip around the southwestern shore of Lake Erie. In addition, they also ceded a portion of land in the southeast corner of the present State of Indiana and sixteen small plots for trading posts on strategic waterways.

The Indian Claims Commission found that the Shawnee Tribe of 1795 was the owner of a 1,667,496 acre tract in the present State of Ohio and within the area ceded by the Indians by the Greenville Treaty. The value of this tract in 1795, as agreed upon by all parties concerned, was \$1,745,146.86. This was the amount of the final judgment. The funds to cover this award were appropriated on March 10, 1978.

Similarly, on March 20, 1979, the U.S. Court of Claims in Docket 64-A awarded \$437,735.92 to the Shawnee Tribe of Indians et al. This award represents additional compensation for lands ceded by the

Shawnee Tribe by the treaties of September 29, 1817, 7 Stat. 160, and September 18, 1818, 7 Stat. 178. The subject lands had been previously confirmed to the Tribe by the Greenville Treaty and reconfirmed after the War of 1812 by the Treaty of September 8, 1815, 7 Stat. 131. The funds to cover this award were appropriated on August 22, 1979.

Prior to the Greenville Treaty, beginning in the 1780's, a large portion of the Shawnee Tribe in an attempt to avoid further hostilities with the United States began a westward migration. By 1790 they had settled in Cape Girardeau which is in the present State of Missouri but at that time was Spanish territory. This group maintained close contact with and was considered a part of the Shawnee Nation still centered in Ohio. As a result of the Greenville Treaty there was a further fragmentation of the tribe. Some moved to the headwaters of the Auglaize River which was outside the ceded territory. Part of the tribe joined those living in Cape Girardeau and a third group settled with some Delaware Indians on the White River in Indiana.

In the early nineteenth century the Indians in the Ohio and Indiana areas were led by the famous Tecumseh and his brother Tenskwatawa, known as "the Prophet". These two exceptional Shawnee leaders attempted to form an alliance among all the tribes to prevent the further erosion of Indian lands by white encroachment. The movement received a severe setback as a result of the famous "Battle" of Tippecanoe. Although the American troops led by the then Indiana Governor William Henry Harrison failed to militarily defeat the Indians, the disruption caused by this attack marked the beginning of the end of the Prophet's influence. The subsequent death of Tecumseh at the "Battle of the Thames" during the War of 1812 ended the era of open hostilities between the United States and the Shawnee Nation.

At the end of the War 1812 and as a result of its disruption, the Shawnee were located in Ohio at Wapakoneta, Hog Creek and Lewiston, on the White River in Indiana, in southern Ontario in Canada and in eastern Missouri. In 1822, part of the Missouri Shawnee moved to east Texas, then a part of Mexico. In 1825-26 the remainder of the Missouri Shawnee and those along the White River in Indiana emigrated to a new reservation in Kansas. In 1828 the followers of Tecumseh who were in Canada joined their fellow tribesmen on the Kansas reservation.

In the 1830's pursuant to the provisions of the Indian Removal Act a treaty was negotiated with the Shawnee at Lewiston, Ohio (who through a prior association were now known as the Mixed Band of Seneca and Shawnee) and they removed to an area in northeastern Oklahoma. At the same time the remaining Shawnee bands at Wapakoneta and Hog Creek joined the Kansas group.

Meanwhile the Shawnee in Texas found the new Texas Republic to be very anti-Indian and so in 1840 they left Texas to settle on the Canadian River in Oklahoma. This group became known as the "Absentee Band". In 1846 they were joined by some members of the Kansas group.

The Civil War caused hardship on all groups of the Shawnee. Both the Absentee and the Mixed Band of Seneca and Shawnee vacated their reservations in Oklahoma for a safer refuge in different parts of Kansas. After the war, however, they both returned to their respective

Oklahoma reservations. In 1867, the Shawnee of the Mixed Band separated from the Seneca and became known as the Eastern Shawnee. Finally, in 1869, the Shawnee of Kansas incorporated with the Cherokee Nation and moved to Oklahoma where they became known as the Cherokee Band of Shawnee. Since the 1870's, up to and including the present, despite minor and temporary dislocation among various parties from these different bands, there have been three identifiable groups of Shawnee: the Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants.

We believe that the beneficiaries of the judgments in Dockets 64, 64-A, 335 and 338 are the Absentee-Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma and the Cherokee Band of Shawnee descendants.

The Absentee-Shawnee Tribe of Indians of Oklahoma is a federally recognized tribe operating under a constitution and by-laws as approved by the Commissioner of Indian Affairs on February 4, 1977. The General Council, all tribal members eighteen and older, is the supreme governing body of the tribe. A five-member executive committee, consisting of a Chairman, Vice-Chairman, Secretary-Treasurer and two Councilmen elected to staggered two-year terms, is the administrative body of the tribe.

The Eastern Shawnee Tribe of Oklahoma is also a federally recognized tribe organized pursuant to the provisions of the constitution and by-laws of December 22, 1939, as amended. The Eastern Shawnee Council, composed of all eligible tribal members, is the governing body. The Business Committee, with a Chief, Secretary-Treasurer and three councilmen all elected for two-year terms, is the administrative body.

The Cherokee Band of Shawnee is a group of Shawnee descendants within the Cherokee Nation. The Shawnee Tribal Business Committee composed of a Chairman, Vice-Chairman, Secretary-Treasurer and four members elected to two-year terms, represents the Cherokee Shawnee descendants in claim matters. This organization is not recognized by the Federal Government as a separate tribal entity.

Section 2 of the enclosed draft bill divides the funds among the three Shawnee groups according to the formula used in the Shawnee judgment distribution as provided in the Act of August 20, 1964, 78 Stat. 555, as follows: 514/1378^{ths} to the Absentee Shawnee Tribe of Oklahoma; 747/1378^{ths} to the Cherokee Band of Shawnee descendants; 117/1378^{ths} to the Eastern Shawnee Tribe of Oklahoma.

This division has been approved by all three groups. It was originally proposed by the Absentee Shawnee Tribe in 1962 and was the basis division of the funds awarded in Docket 334 and distributed by the Act of August 20, 1964. It was also the basis of the division between the Absentee and Cherokee Shawnee in Docket 334-B. It was formulated by using the Absentee Shawnee allotment roll of March 3, 1891 (514 allottees); Eastern Shawnee allotment rolls of 1888 and 1902 (117 allottees); and the Cherokee Band of Shawnee payment roll of 1888 and 1904 (747 persons).

The Executive Committee of the Absentee Shawnee Tribe of Oklahoma's proposal was the subject of a hearing of record on November 17, 1979. The proposal is that seventy-five (75) percent of their portion of the award be distributed per capita to all eligible tribal

members. The remaining twenty-five (25) percent is to be utilized as matching funds for federal grants and/or other tribal purposes. This proposal was overwhelmingly approved at the hearing. The then Acting Superintendent of the Shawnee Agency and the then Acting Anadarko Area Director both recommended this proposal. Section 3 of the enclosed draft reflects the tribal proposal.

Similarly, the General Council of the Eastern Shawnee Tribe of Oklahoma proposed that eighty (80) percent of their portion of the judgment funds be distributed on a per capita basis to all eligible tribal members. The remaining twenty (20) percent was proposed to be utilized in a tribal land purchase program. No objections were voiced at a hearing of record held on this proposal in Miami, Oklahoma, on January 17, 1981. The Muskogee Area Director in his memorandum forwarding the transcript of the hearing also endorsed the tribal proposal. Section 4 of the draft bill reflects the tribe's proposal.

Section 5 would require the Secretary to prepare a roll of the Cherokee Band of Shawnee descendants. Subsequently, the Secretary would be required to distribute the Cherokee Band of Shawnee descendants' portion of the award in equal per capita shares to all those so listed.

The manner by which the funds will be distributed, including the handling, protection and preservation of deceased beneficiaries', legal incompetents' and minors' shares, is presented in Section 6.

Section 7 provides recipients of per capita shares protection of eligibility for assistance under the Social Security Act. Finally, Section 8 authorizes the Secretary to enact the rules and regulations that will be necessary to fulfill the provisions of the draft bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administrations program.

Sincerely,

KEN SMITH,
Assistant Secretary, Indian Affairs.

Enclosure.

A BILL To provide for the use and distribution of the funds awarded to the Shawnee Tribe of Indians in Dockets 64, 335 and 338 by the Indian Claims Commission and Docket 64-A by the U.S. Court of Claims, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, the funds appropriated on March 10, 1978, and August 22, 1979, in accordance with Section 1302 of the Supplemental Appropriation Act, 31 U.S.C. 724A, in satisfaction of judgments granted to the Shawnee Tribe in Dockets 64, 335 and 338 by the Indian Claims Commission and in Docket 64-A by the U.S. Court of Claims, less attorney fees and litigation expenses, including all interest and investment income accrued, shall be used and distributed as herein provided.

SEC. 2. The Secretary of the Interior (hereinafter "Secretary") shall divide the funds among the Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma and the Cherokee Band of Shawnee descendants as follows: 514/1378th to the Absentee

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Shawnee Tribe of Oklahoma; 117/1378th to the Eastern Shawnee Tribe of Oklahoma; 747/1378th to the Cherokee Band of Shawnee descendants.

SEC. 3. The Absentee Shawnee Tribe of Oklahoma's share shall be distributed as follows:

(a) A roll shall be prepared, in accordance with the procedures enacted by the tribal governing body and approved by the Secretary, of all members of the Absentee Shawnee Tribe of Oklahoma who were born on or prior to and living on the date of this Act. Subsequent to the preparation of this roll, the Secretary shall make a per capita distribution of seventy-five (75) percent of the Absentee Shawnee Tribe's share of the funds, in a sum as equal as possible, to all persons listed on this roll.

(b) The remaining twenty-five (25) percent shall be utilized as follows: (1) A sum, not to exceed \$150,000.00, shall be utilized as matching funds to acquire an Economic Development Administration (EDA) grant from the Department of Commerce to construct a multi-purpose restaurant: *Provided*, That if the tribe is unable to acquire this grant that the funds herein discussed be distributed according to the provisions of Section 3(b)(2).

(2) The Executive Committee of the Absentee Shawnee Tribe of Oklahoma shall prepare, subject to the approval of the Secretary, administrative guidelines for the remainder of the funds for use in education, health, economic and related programs which will benefit the entire tribe.

SEC. 4. The Eastern Shawnee Tribe of Oklahoma's share shall be distributed as follows:

(a) A roll shall be prepared, in accordance with the procedures enacted by the tribal governing body and approved by the Secretary, of all members of the Eastern Shawnee Tribe of Oklahoma who were born on or prior to and living on the date of this Act. Subsequent to the preparation of this roll, the Secretary shall make a per capita distribution of eighty (80) percent of the Eastern Shawnee Tribe's share of the funds, in a sum as equal as possible to all persons listed on this roll.

(b) The remaining twenty (20) percent shall be utilized for a tribal land purchase program pursuant to the provisions of 25 CFR Part 120-A: *Provided*, That no salaries shall be paid from these funds, *Provided further*, That the funds shall be in the custody of the tribal secretary/treasurer and all expenditures shall be approved by the Eastern Shawnee Tribe of Oklahoma Business Committee.

SEC. 5. A roll shall be prepared by the Secretary based on the roll of the Cherokee Shawnee compiled pursuant to the Act of March 2, 1889, 25 Stat. 994, and any other records acceptable to him, of all the lineal descendants, except members of the Absentee Shawnee Tribe of Oklahoma or the Eastern Shawnee Tribe of Oklahoma, of the Shawnee Nation as it existed in 1854, who were born on or prior to and living on the date of this Act. Subsequent to the preparation of this roll, the Secretary shall make a per capita distribution of the Cherokee Band of Shawnee descendant's share of the funds, in a sum as equal as possible, to all persons listed on this roll.

SEC. 6. The per capita shares of living competent adults shall be paid directly to them. Per capita shares of deceased individual beneficiaries shall be determined and distributed pursuant to regulations prescribed by the Secretary. Per capita shares of legal incompetents and per capita shares of individuals under age eighteen shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines to be necessary to protect the interests of such individuals.

SEC. 7. None of the funds distributed under this Act shall be subject to Federal or State income taxes or be considered income or resources in determining eligibility for or the amount of assistance under the Social Security Act.

SEC. 8. The Secretary of the Interior is authorized to prescribe rules and regulations to carry out the provisions of this Act.

